

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

C.M.A.No.68 OF 2018

JUDGMENT:

This civil miscellaneous appeal is filed under Order XLIII Rule 1(r) C.P.C. challenging the order dated 23.10.2017 in I.A.No.1411 of 2016 in O.S.No.524 of 2016 passed by the Additional Senior Civil Judge, Kurnool, vacating the interim order dated 22.12.2016 directing both parties to maintain status quo.

The appellant was the plaintiff, who filed the suit for perpetual injunction restraining the respondents/defendant from closing or occupying the 'Bandla Rastha' shown as 'R1R1R1' and "R2R2R2" in the plaint plan, claiming that he has right to enjoy the cart track, which is described as 'bandla bata' in the plaint. Initially, Senior Civil Judge granted order directing the parties to maintain status quo, but the same was vacated on account of the petitioner reporting not ready.

The present appeal is filed on the ground that the trial Court instead of deciding the petition on merits, vacated the status quo order on account of the petitioner reporting not ready, on the ground that the documents held up with the District Registrar, Kurnool, for impounding. Until the documents are returned by the District Registrar, Kurnool after collecting stamp duty and penalty, the matter cannot be proceeded further by the petitioner to substantiate their claim over the property. But the trial Court without heeding the request of learned counsel for the petitioner, and without waiting for return of documents from the District Registrar, Kurnool, vacated the interim order. Therefore, requested this Court to restore the same.

The petitioner is claiming right in cart track, either by express or implied grant or by customary easement under Section 18 of the Easements Act, but the basis for claim is agreement of sale, which is referred to the District Registrar, Kurnool for impounding. It is settled law that the agreement of sale will not confer any title or right in the immovable property under Section 54 of the Transfer of Property Act. However, the trial Court based on the situation

prevailing on the date of passing such interim order directed both parties to maintain status quo. As the document is held up with the Registrar, Kurnool, learned counsel reported not ready, vacated the interim order.

Keeping the petition pending before the Court for more than 30 days is an irregularity and it is the duty of the Court to decide the petition within 30 days from the date of granting ex parte interim order in view of Order 39 Rule 3-A C.P.C. When the Court issued direction to maintain status quo as an ad-interim order, the Court ought to have decided the petition within 30 days in compliance of the provisions. But suddenly vacated the interim order without deciding the petition, which is contrary to the procedure. Therefore, I deem it appropriate to direct the Court below to decide I.A.No.1411 of 2016 in O.S.No.524 of 2016 within four weeks from the date of receipt of a copy of this order.

Accordingly, civil miscellaneous appeal is allowed, setting aside the order dated 23.10.2017 in I.A.No.1411 of 2016 in O.S.No.524 of 2016 passed by the Additional Senior Civil Judge, Kurnool. However, I.A.No.1411 of 2016 in O.S.No.524 of 2016 is remanded to the Additional Senior Civil Judge, Kurnool with a direction to dispose of the petition in accordance with law after affording reasonable opportunity to both parties and advert to the contentions raised both in the petition and counter of the parties and answer such relevant contentions in accordance with law within four months from the date of receipt of a copy of this order. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.

JUSTICE M. SATYANARAYANA MURTHY

30.01.2018
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